



- Bureau of Motor Vehicles
- Emergency Management Agency
- Emergency Medical Services
- Office of Criminal Justice Services
- Ohio Homeland Security
- Ohio State Highway Patrol



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October 2, 2017

Emily Brown, Esq.
Kathleen Kersh, Esq.
Advocates for Basic Legal Equality
525 Jefferson Avenue
Toledo, OH 43604

Re: Your letter of August 2, 2017

Dear Ms. Brown and Ms. Kersh:

This is in response to your letter dated August 2, 2017. Because I believe that there has been some unfortunate miscommunication between the Bureau of Motor Vehicles (BMV) and Advocates for Basic Legal Equality (ABLE) in the past, I will attempt to clarify the actions taken and policies developed by the BMV under applicable Ohio and federal statutes, Ohio administrative rules, and federal regulations.

As you well know, the days when a state driver's license was merely evidence of the privilege to operate a motor vehicle are long gone. State driver's licenses have become the most widely recognized and used form of personal identification. Because the BMV applies the same identification requirements to Ohio driver's licenses, commercial driver's licenses, temporary instruction permits, and state identification (ID) cards, I will refer to them in this letter collectively as "BMV credentials" or "credentials."

The prevention of identity fraud and identity theft is a major consideration in the issuance of any BMV credential. A person who applies for a BMV credential must present identification documents sufficient to establish the person's: full legal name; date of birth; social security number; residential street address in the state of Ohio; and status as a citizen, permanent resident, or temporary resident of the United States.

The prevention of identity fraud and identity theft is of equal importance whether the applicant is a citizen of the United States, an immigrant, a foreign national intending to remain in the United States, or a foreign national intending to return to his or her home country at some time in the future.

Ohio statutes provide for two types of BMV credentials, standard four-year renewable credentials and "nonrenewable" credentials. See R.C. 4507.09. Standard four-year renewable credentials may be issued to "residents" of Ohio as provided in R.C. 4507.01(A) and O.A.C.4501:1-1.35. These standard credentials are issued "to a person who is a native-born or naturalized citizen of the United States or a person who presents credible evidence from the United States citizen and immigration services (USCIS) that the person is a permanent resident of the United States."

A "nonrenewable" credential "may be issued to a temporary resident of this state when the applicant presents acceptable documents, including those listed in rule 4501:1-1-21 of the Administrative Code, verifying the following: the applicant's full legal name, date of birth, social security number if ever assigned, proof of Ohio street address and legal presence in the United States, and temporary residence in this state." See R.C. 4507.01(A) and O.A.C.4501:1-1.37. "Legal presence" and "legal presence documents" are defined in O.A.C. 4501:1-1-37(A)(4) and (5). Essentially, the BMV relies entirely on USCIS documents to establish a person's

Mission Statement

"to save lives, reduce injuries and economic loss, to administer Ohio's motor vehicle laws and to preserve the safety and well being of all citizens with the most cost-effective and service-oriented methods available."

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immigration or legal presence status. In doing so, the BMV is not establishing or enforcing immigration standards or statuses. The BMV agrees with ABLE that immigration matters are a federal, not state, function. The BMV defers to USCIS on all immigration matters.

However, USCIS determinations have a significant bearing on Ohio's and other states' issuance of driver's licenses and identification credentials. 6 CFR 37.11 sets forth the federal requirements an applicant must meet to obtain a state driver's license or other identification credential. 6 CFR 37.13 requires states to "verify any document described in § 37.11(c) or (g) and issued by DHS (including, but not limited to, the I-94 form described in § 37.11(c)(vi)) through the Systematic Alien Verification for Entitlements (SAVE) system or alternate methods approved by DHS..." and to "verify SSNs with the Social Security Administration (SSA) or through another method approved by DHS."

One of ABLE's stated concerns appears to be that the BMV is verifying some, but not all DHS (USCIS) documents through the Systematic Alien Verification for Entitlements (SAVE) system. ABLE argues that "[t]his policy violates the Equal Protection Clause of the Fourteenth Amendment." As a practical matter, the BMV has been able to verify some documents by accessing the SAVE system by manual inquiry to the SAVE system. The BMV is in the process of coming into more complete compliance with 6 CFR 37.13 by implementing a program to access all § 37.11(c) and (g) documents electronically. Until electronic access to all appropriate USCIS documents is accomplished, it would not be appropriate to regress by abandoning the established manual access system in appropriate cases.

A second stated ABLE concern is that the BMV has determined that a refugee I-94 stamped over two years ago is not an acceptable legal presence document when it is not accompanied by other acceptable evidence. ABLE has characterized this as "an impermissible attempt by a state agency to subclassify immigrant categories." The BMV disagrees with ABLE's characterization.

ABLE notes that refugees who do not adjust their status to lawful permanent residence immediately after one year are still considered refugees by the federal government, and are entitled to renew their EADs under category (a)(3) and to apply for public benefits. The BMV recognizes this fact and will issue credentials if those refugees present either a current EAD or an I-797 for an I-485 application (pending permanent status).

BMV Investigations has found that there is a significant increase in fraud when an applicant presenting a refugee I-94 stamped over two years ago does not present any evidence of either an EAD or an I-797 for an I-485 application. As noted above, the prevention of identity fraud and identity theft is a major consideration in the issuance of any BMV credential and this policy is aimed toward the prevention of identity fraud and identity theft, not the purported enforcement of federal immigration policies.

In summary, the BMV is in accord with the Ohio Attorney General's advice that DACA recipients are eligible to receive Ohio driver's license and identification credentials. DACA recipients, like all applicants for BMV credentials, are reasonably expected and required to present acceptable documentation of their status. The BMV has a duty to verify identification documents presented to prevent identity fraud. It is BMV's position that it is carrying out its duties in a fair and reasonable manner.

I hope that this clarifies the BMV's position regarding the concerns raised in your letter.

Sincerely,



Donald J. Petit
Registrar



OHIO DEPARTMENT OF PUBLIC SAFETY
BUREAU OF MOTOR VEHICLES

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